

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

JOSEPH C. RAY

Plaintiff,

v.

**TEXAS HOME HEALTH OF
AMERICA, LP**

Defendant.

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CIVIL ACTION NO. 9:12CV00022

**AGREED MOTION FOR COURT APPROVAL OF SETTLEMENT
AGREEMENT AND ENTRY OF STIPULATED JUDGMENT**

1. Plaintiff Joseph C. Ray ("Ray" or "Plaintiff") and Defendant Texas Home Health of America, LP ("Texas Home Health" or "Defendant") file this Agreed Motion for Court Approval of Settlement Agreement and Entry of Stipulated Judgment.

2. The parties file this Motion seeking Court approval of the parties' settlement agreement and entry of a final stipulated judgment because this lawsuit involves a claim under the Fair Labor Standards Act ("FLSA") and in such an action the Court must approve the parties' settlement. *Villeda v. Landry's Restaurants, Inc.*, Civil Action No. H-08-2287, 2009 WL 3233405 (S.D. Tex. Oct. 7, 2009).

3. The parties seek termination of this case through a stipulated judgment because the federal courts have indicated a stipulated judgment is an appropriate means for terminating an FLSA suit when it is settled by the parties and the settlement is approved by the court. *Lynn's Food Stores, Inc. v. U.S. ex rel. U.S. Dept. of Labor*, 679 F.2d 1350, 1352-54 (11th Cir.1982); *Thomas v. State of Louisiana*, 534 F.2d 613, 614 (5th Cir. 1975).

4. Plaintiff and Defendant have agreed to settlement terms that constitute a fair and reasonable resolution of a bona fide dispute. A copy of the proposed Confidential Settlement and Release Agreement (the "Agreement") has been submitted for Court approval by separate

motion. The proposed Agreement provides for a settlement payment and resolves all matters in controversy between the parties, and under that Agreement all claims that Plaintiff asserted or could have asserted against Defendant will be fully and finally released. This Agreement includes, without limitation, settlement and release of any claims for attorneys' fees and/or costs. All attorneys' fees and costs incurred by the parties will be paid by the parties incurring them except to the extent expressly provided otherwise in the Agreement. Plaintiff has been advised by Plaintiff's counsel regarding this Agreement.

5. In requesting approval of this Agreement, the parties note the following: (i) Defendant and Plaintiff agree there are bona fide disputes of both law and fact; (ii) there are also genuine disputes over, among other issues, defenses, hours worked, backpay, liquidated damages and attorneys' fees; (iii) the Agreement makes allowances for the inherent difficulties and costs of a trial and eliminates the uncertainty that either party may face should the case proceed to trial; (iv) the Agreement eliminates the need for further discovery and eliminates the risk of appeal by either party; (v) all matters in controversy between the parties have been resolved; (vi) the Agreement will provide Plaintiff with a significant portion of the amount Plaintiff could conceivably have received if this matter had proceeded to trial and the Plaintiff were to prevail; and (vii) the amounts to be paid to the Plaintiff and amount of attorneys' fees to be paid under the Agreement are fair and reasonable.

6. Plaintiff and Defendant request that the Court approve the Agreement and enter the Stipulated Final Judgment filed with this motion.

WHEREFORE, Plaintiff and Defendant respectfully request that the Court approve the Agreement and enter the Stipulated Final Judgment filed with this motion.

DATED: May 31, 2012

Respectfully submitted,

Bracewell & Giuliani LLP

/s/ Robert S. Nichols

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ATTORNEY FOR PLAINTIFF
JOSEPH C. RAY

CERTIFICATE OF SERVICE

I hereby certify that, on May 31, 2012, I have served a true and correct copy of the Agreed Motion for Court Approval of Settlement Agreement and Entry of Stipulated Judgment, via the Court's electronic filing system on the following counsel of record:

Charles R. Dendy
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/s/ Robert S. Nichols
Robert S. Nichols